

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
CORMAR LTD., WILL W. STOCKING,  
and NARROWS REACH VENTURE,

Appellants,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 85-62

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

THIS MATTER, the appeal of a Notice and Order of Civil Penalty of \$500 for unlawful burning (an unpermitted outdoor fire containing prohibited materials) came on for hearing before the Pollution Control Hearings Board at Lacey, Washington, on August 15, 1985. Seated for and as the Board was Lawrence J. Faulk (presiding). Wick Dufford and Gayle Rothrock have reviewed the record. Respondent Agency elected a formal hearing, pursuant to RCW 43.21B.230 and WAC 371-08-155. Donna K. Woods, court reporter of Robert H. Lewis & Associates, officially reported the proceedings.

1 Appellant Will Stocking, superintendent of Cormar Ltd., appeared  
2 and represented the appellants. Respondent Agency was represented by  
3 its legal counsel, Keith D. McGoffin.

4 Witnesses were sworn and testified. Exhibits were admitted and  
5 examined. Argument was heard. From the testimony, evidence, and  
6 contentions of the parties, the Board makes these

7 FINDINGS OF FACT

8 I

9 Respondent, pursuant to RCW 43.21B.260, has filed with the Board a  
10 certified copy of its Regulations I and II and all amendments thereto,  
11 dated July 26, 1985. We take official notice of those regulations.

12 II

13 On February 11, 1985, in the morning while on routine patrol, an  
14 inspector from PSAPCA investigated an outdoor fire complaint on a  
15 construction site between North 30th and North 26th Street in Tacoma,  
16 Pierce County, Washington, identified as Narrows Reach Condominiums.  
17 The inspector drove into the construction site and saw dense  
18 bluish-white smoke of one hundred percent opacity rising from the fire  
19 pile.

20 III

21 The inspector observed a fire pile containing pieces of plywood,  
22 pressed board, and cardboard--substances other than natural  
23 vegetation--approximately six feet in diameter and two feet high. No  
24 prior written agency approval had been granted for the fire under  
25 Section 8.05(1) of Regulation I. It was raining on this day in

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1 February.

2 IV

3 During the observation, the inspector took two photographs showing  
4 the dense smoke and contents of the fire. Appellant Stocking was then  
5 present at the site and identified himself as superintendent for  
6 Cormar, Ltd., general contractors. The inspector discussed the matter  
7 with Mr. Stocking, who stated that he had started the fire.

8 The appellant said that the fire contained only wood. We find it  
9 contained processed materials which normally emit dense smoke.  
10 Appellant testified that he put the fire out immediately when the  
11 inspector asked him to and subsequently hauled the debris to the dump.

12 V

13 Subsequent investigation revealed that the construction site is  
14 held by Narrows Reach Venture.

15 On February 11, 1985, the inspector mailed field notice of  
16 violation (No. 20500) for an infraction of the Agency's Regulation I,  
17 Section 8.05 and for causing or allowing a fire without prior written  
18 approval of PSAPCA and field notice of violation No. 20499 for  
19 violation Section 8.02(3) of Regulation I for causing or allowing a  
20 fire containing prohibited materials.

21 On March 27, 1985, respondent Agency issued a formal notice and  
22 Order of Civil Penalty No. 6235 jointly to Will Stocking, Cormar Ltd.,  
23 and Narrows Reach Venture, assessing \$500 for the same asserted  
24 violations. From this action, appellants appealed to this Board on  
25 April 18, 1985.

26 FINAL FINDINGS OF FACT,  
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1 VI

2 Appellant Stocking had a previous encounter with PSAPCA over  
3 alleged unlawful outdoor burning of prohibited material in 1983.  
4 Appellant was issued a warning for that violation, in the form of a  
5 letter from PSAPCA.

6 VII

7 Appellant Stocking argued that he was not responsible for the  
8 previous violation in 1983. He stated that the prohibited material  
9 (tires) were thrown into the fire by his employees while he was at  
10 lunch. Concerning the February 11, 1985, occurrence, Mr. Stocking did  
11 not contest any of the evidence regarding the fire.

12 VIII

13 Any Conclusion of Law which is deemed a Finding of Fact is hereby  
14 adopted as such.

15 From these Findings of Fact, the Board comes to these

16 CONCLUSIONS OF LAW

17 I

18 The Board has jurisdiction over these persons and these matters.  
19 Chapters 43.21B and 70.94 RCW.

20 II

21 RCW 70.94.740 states, in pertinent part:

22 It is the policy of the state to achieve and maintain  
23 high levels of air quality and to this end to  
24 minimize to the greatest extent reasonably possible  
25 the burning of outdoor fires. Consistent with this  
26 policy, the legislature declares that such fires  
27 should be allowed only on a limited basis under  
strict regulation and close control.

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1 RCW 70.94.775 states, in pertinent part:

2 No person shall cause or allow any outdoor fire:

3 (1) containing garbage, dead animals, asphalt,  
4 petroleum products, paints, rubber products,  
5 plastics, or any substance other than natural  
6 vegetation which emits dense smoke or obnoxious  
7 odors...

8 III

9 Section 8.02 of Regulation I, entitled "Prohibited Outdoor Fires"  
10 states in pertinent part:

11 It shall be unlawful for any person to cause or  
12 allow any outdoor fire: ...

13 (3) containing garbage, dead animals, asphalt,  
14 petroleum products, paints, rubber products, plastics  
15 or any substance other than natural vegetation which  
16 normally emits dense smoke or obnoxious odors; or

17 (4) for the purpose of demolition, salvage or  
18 reclamation of materials; or

19 ...

20 Section 8.05 of Regulation I entitled "Other Burning" states in  
21 pertinent part:

22 It shall be unlawful for any person to cause or  
23 allow any outdoor fire other than land clearing  
24 burning or residential burning except under the  
25 following conditions:

26 (1) Prior written approval has been issued by  
27 the Control Officer or Board; and

(2) Burning is conducted at such times and under  
such conditions as may be established by the Control  
Officer or Board.

IV

We conclude that an outdoor fire did occur on February 11, 1985,  
that violated Section 8.02(3) and Section 8.05 of Regulation I. We

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1 conclude that Mr. Stocking was responsible for the fire containing  
2 prohibited materials. Cormar Ltd., likewise was responsible on the  
3 principle of respondeat superior. Narrows Reach Venture was also  
4 appropriately included in the joint penalty by virtue of Section  
5 8.04(b) of Regulation I.

6  
7 V

8 The Washington Clean Air Act, chapter 70.94 RCW, is a strict  
9 liability statute. Explanations do not operate to excuse violations  
10 of regulations adopted under its authority. Air contaminant sources  
11 are required to conform to such regulations.

12 VI

13 In determining whether a fine should be sustained against Mr.  
14 Stocking, the surrounding facts and circumstances are relevant.  
15 Factors bearing on reasonableness must be considered. These include:

- 16 (a) the nature of the violation;  
17 (b) the prior behavior of the violator; and  
18 (c) actions taken to solve the problem.

19 VII

20 Appellant Stocking did cause the unpermitted fire. The violation  
21 was clear and obvious. Appellant Stocking has a prior experience with  
22 PSAPCA's Regulation I as it relates to outdoor burning and should have  
23 known better.

24 VIII

25 The Board denies respondent's motion to dismiss this appeal on  
26 grounds of timeliness. The fact that the appeal was not served on

1 respondent Agency within 30 days is not fatal to the appeal. The  
2 appeal was received by the Board within the 30 days allowed by law.  
3 RCW 43 21B.230.

4 IX

5 On the record before us, we conclude that assessing a penalty  
6 against appellants in this instance is reasonable. Weighing the facts  
7 of this case and the testimony and behavior of appellant Stocking, we  
8 conclude that the Order set forth below is appropriate.

9 VIII

10 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
11 adopted as such.

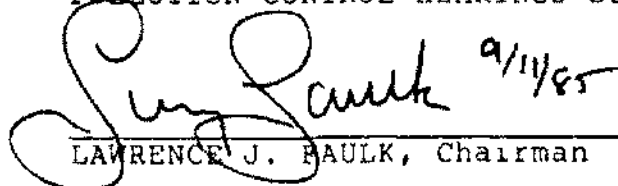
12 From these Conclusions of Law the Board enters this  
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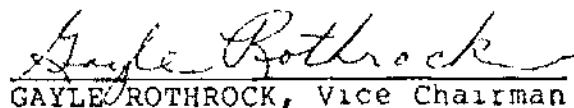
ORDER

The Notice and Order of Civil Penalty (No. 6235) is affirmed.

DONE this 13<sup>th</sup> day of September, 1985.

POLLUTION CONTROL HEARINGS BOARD

 9/11/85  
LAWRENCE J. FAULK, Chairman

  
GAYLE ROTHROCK, Vice Chairman

  
WICK DUFFORD, Lawyer Member

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